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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/544,004	04/06/00	SAEBO A	CONLINCO-042

HM12/0814

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EXAMINER	
WANG, S	
ART UNIT	PAPER NUMBER
1617	7

DATE MAILED: 08/14/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No. 09/544,004	Applicant(s) SAEBO ET AL.	
	Examiner Shengjun Wang	Art Unit 1617	

-- The MAILING DATE of this communication app ars on the cover sheet with the correspond nc address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12 July 2001* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-38* is/are pending in the application.

4a) Of the above claim(s) *6 and 20-23* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-5, 7-19 and 24-38* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *4* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

ADETAILED ACTION

1. Claims 20-23 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made without traverse in Paper No. 6 submitted July 12, 2001. Claim 6 is withdrawn from further consideration as being drawn to a nonelected species.

2. Applicant's election without traverse of invention group I, claims 1-19 and 24-38 in Paper No. 6 submitted July 12, 2001 is acknowledged.

3. Applicant's election of species ascorbic acid in Paper No. 6 submitted July 12, 2001 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claim Rejections 35 U.S.C. 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1-19, 26, 27 and 35-38 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The claims recite CLA composition comprising less than 100 ppm of volatile organic compounds (VOC). The specification defines the volatile organic compounds as "any carbon-containing compound which exists partially or completely in a gaseous state at *a given* temperature." This definition virtually encompass any non-polymeric organic compounds,

including fatty acid and their esters, e.g., CLA acid or its esters. Therefore, one of ordinary skill in the art would not be able to make a CLA composition while meet the requirement about VOC set forth in the claims.

Claim Rejections 35 U.S.C. §102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 35, 37 and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Lievense (EP 0779033, IDS).

8. Lievense teach a composition comprising CLA moiety which does not affect the smell or taste of the composition. The CLA moiety may be a mixture of free CLA and CLA triglyceride. See, the abstract and the claims.

Claim Rejections 35 U.S.C. §103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1-5, 7-19 and 24-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over both Cook et al. (U.S. Patent 5,760,082, IDS) and Lievense et al. (U.S. patent 6,159,525) in view of Cain et al. (WO 97/18320, IDS)

3. Cook teaches a food product containing conjugated linoleic acids, their esters, salts or mixtures. The linoleic acid compounds may be from corn oil, safflower etc. the food products may further containing vitamins. See, particularly, the abstract, column 1, lines 10-13, lines 49-60. Column 2, lines 51-67, Examples 3 and 5. Cook further teaches that conjugated linoleic acid may be incorporated into various food products. See column 5, lines 6-14. Lievense et al teaches a food products comprising CLA compounds which has sensoric properties as good as corresponding food product without CLA.

4. The primary references do not teach expressly the employment of ascorbic acid or particularly point out the amount of VOC.

5. However, Cain teaches that CLA is known to be sensitive to oxygen and addition of antioxidant to a composition comprising CLA is recommended. The antioxidants may be a derivative of ascorbic acid (vitamin C). See, page 6, lines 29-36 and claims 10 and 13-15.

Therefore, it would have been prima facie obvious to a person of ordinary skill in the art, at the time the claimed the invention was made, to employ vitamin C in the composition, or food products in Cook or Lievense.

A person of ordinary skill in the art would have been motivated to employ vitamin C in the composition, or food products in Cook or Lievense because vitamins are known to be useful with CLA in food products, and vitamin C is one of well-known antioxidants which are known to be useful in CLA composition for stabilizing CLA compounds. Regarding to the limitation about the amount of VOC, since the prior art teach that the food products containing CLA do not have any sensoric property caused by VOC, the amount of VOC is reasonably believed to be very low. The amount of VOC claimed herein is either within the scope of the prior art, or an

obvious variation of the prior art, lacking the criticality to the final products. Regarding the particular function of vitamin C claimed herein, i.e., metal chelator, note the intended function of a component in a composition would not render any patentable weight to the composition.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shengjun Wang, Ph.D. whose telephone number is (703) 308-4554. The examiner can normally be reached on Monday-Friday from 8:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Minna Moezie, J.D., can be reached on (703) 308-4612. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

S. Wang

Shengjun Wang

AU 1617

August 11, 2001

RUSSELL TRAVERS
PRIMARY EXAMINER
GROUP 1200